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## Local food systems in public procurement. A comparative law analysis in four European Union Member States

Sistemi alimentari locali negli appalti pubblici.  
Un'analisi di diritto comparato  
in quattro Stati membri dell'Unione europea

The aim of the considerations is to determine whether and to what extent selected EU Member States – Italy, France, Spain and Poland – have applied legal instruments to promote local food systems through public procurement, and in particular, whether they have provided for the food rooting criterion, or the localism food clause which favours food which is geographically closer, to be applied in the public procurement process. The conducted considerations show that both Italian, French and Spanish legislations have incorporated the localism food clause, though differently in each Member State: in Italy and Spain – through regional regulations that explicitly contain such a clause, in France – through the institutionalisation of the Territorial Food Projects. Direct delivery, or even “local” products criteria are also included in the school food regulations of these countries. In Poland, on the contrary, neither the public procurement law nor food school regulations favour local food systems, as they completely ignore the criteria relating to the characteristics of the products related to their origin or delivery method.

**Keywords:** green public procurement, local food, short supply chains, direct delivery, school food

L'articolo si propone di determinare se e in quale misura alcuni Paesi dell'UE scelti – Italia, Francia, Spagna e Polonia – abbiano adottato strumenti giuridici per promuovere i sistemi alimentari locali negli appalti pubblici, e in particolare se hanno previsto un criterio di radicamento del cibo oppure una clausola sulla natura locale del cibo che favorisca gli alimenti geograficamente più vicini negli appalti pubblici. Dalle considerazioni svolte emerge che sia la legislazione italiana, francese che quella spagnola, anche se non in ugual misura in ognuno di questi Stati membri, abbia previsto una clausola sulla natura locale del cibo: in

Italia e Spagna – grazie a normative regionali che prevedono tale clausola in modo esplicito, in Francia – istituzionalizzando i Progetti Alimentari Territoriali. I criteri per l’approvvigionamento diretto e perfino dei prodotti “locali” sono anche inclusi nelle normative sull’alimentazione scolastica di questi Paesi. In Polonia, invece, sia la legge sugli appalti pubblici che la normativa sui pasti scolastici non favorisce i sistemi alimentari locali in quanto fa completamente a meno dei criteri relativi alle caratteristiche quali l’origine e la modalità di consegna dei prodotti.

**Parole chiave:** appalti pubblici verdi, cibo locale, filiere corte, consegne dirette, alimentazione scolastica

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## Introduction

Appropriately implemented and promoted local food systems may deliver multiple social, economic, and environmental benefits. An important legal instrument that can support their development is public procurement which, according to the FAO, is a key game-changer in the transformation of food systems as it can influence both food consumption and food production patterns.<sup>1</sup> The role of public procurement in local food promotion has already been discussed in the literature with reference to European law,<sup>2</sup> and this article focuses on its national implementations.

First, it should be noted that the localism food clause as such cannot be directly applied in the case of public procurement as it would be contrary to the EU principle of non-discrimination and the free movement of goods.<sup>3</sup> However, Directive 2014/24/EU on public procurement<sup>4</sup> provides for the use of contract award criteria (including environmental, quality or social aspects) in order for the contracting authority to assess whether the tender is the most economically advantageous in terms of the best price-quality ratio.<sup>5</sup> Of great importance is also the reduction of the environmental impact of products such as organic or seasonal products, throughout their life cycle. Thus, local food systems could be promoted differently, in different

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<sup>1</sup> FAO, *Alliance of Bioersivity International and CIAT*, Rome 2021, p. 2.

<sup>2</sup> A. Kapała, *Zamówienia publiczne na żywność lokalną w prawie Unii Europejskiej*, “Przegląd Prawa Rolnego” 2022, no. 1, pp. 93–106; M.J. Muñoz Gómez, *Promoting local food systems through public procurement in the European Union*, “Przegląd Prawa Rolnego” 2023, no 2, pp. 143–157.

<sup>3</sup> *Ibidem*.

<sup>4</sup> OJ L 94, 28.3.2014.

<sup>5</sup> Article 67 (1) of Directive 2014/24/EU.

stages of public procurement, with the help of legal measures, from clauses priming the freshness, the seasonality of produce or awarding the short supply chains, to other legal techniques as the division of contracts into lots and the market consultations. All these legal tools largely accepted by the public procurement EU law,<sup>6</sup> will help local food systems to flourish in a roundabout way.

In practice, however, it is the provisions at national level that implements the Directive, and they constitute the binding legal basis for the award of public contracts in the Member States. It is therefore important that the national legislator takes appropriate measures to encourage public institutions to use the above-mentioned criteria for sustainable and green public food procurement. Depending on each country's policy and regulatory framework, public procurement initiatives may determine what type of food is purchased, from whom and from what type of production. The aim of the considerations is to determine whether and to what extent selected EU countries – Italy, France, Spain and Poland – have taken into account the available legal instruments to promote local food systems through public procurement, and especially whether they have provided for the food rooting criterion, or localism food clause, which favours geographically closer food. To achieve this goal, national public procurement regulations will be analysed, and – in the case of Italy and Spain, also regional regulations because of the legislative competences of their regions.

## 1. Public procurement regulations for local food in Italy

In Italy, public procurement must comply with Legislative Decree No. 36/2023 establishing the Public Procurement Code.<sup>7</sup> In accordance with Article 130(1) of that Act, contracts for catering services<sup>8</sup> are to be awarded solely on the basis of the criterion of the most economically advantageous

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<sup>6</sup> D. Melo Fernandes, *Preferências Locais na Contratação Pública*, Coimbra 2022, p. 115. Local food clause, understood as social proximity, enjoys a presumption of validity in the legal regime of public procurement due to the primacy of the CAP policy over competition rules, *ex Judgment of the CJUE of 29 October 1980, Case 139/79, para. 23. Doctrine maintained by the CJUE consistently up to the present day: C-280/93, C-137/00 and C-671/15, among others.*

<sup>7</sup> Decreto legislativo 31 marzo 2023, n. 36 Codice dei contratti pubblici in attuazione dell'articolo 1 della legge 21 giugno 2022, n. 78, recante delega al Governo in materia di contratti pubblici (Gazzetta Ufficiale no.77 of 31.03.2023 – Suppl. Ordinario no. 12), hereinafter cited as Decree No 50/2016.

<sup>8</sup> Catering services as indicated in Annex XIV of Directive 2014/24/EU.

tender, identified on the basis of the best value for money. In particular, in the evaluation of the technical tender by awarding bonus points, the quality of foodstuffs shall be taken into account with particular emphasis on organic products, typical and traditional products, products with protected designations, as well as products from short supply chains and social farming operators.

Moreover, pursuant to Article 130(2) of Decree 36/2023, in the case of public contracts for the operation of school lunches and the supply of food and agri-food products to crèches, kindergartens, primary schools, lower secondary and secondary schools and other public facilities for children and young people under eighteen years of age, contracting entities must ensure and guarantee, among others things an appropriate share of agricultural, fishery and agri-food products from short and organic supply chains, and – in any case – with a limited impact on the environment and their quality.

In addition, pursuant to Article 130(4) of Decree 36/2023, national guidelines on hospital nutrition, social welfare and education are defined and updated by decrees of the Minister of Health, in consultation with the Minister of Environment and Energy Security and the Minister of Agriculture, Food Sovereignty and Forestry. The guidelines issued on the basis of the previous Public Procurement Code, established by Decree No 50/2016,<sup>9</sup> indicate that the technical specifications of the tender notice should include criteria such as typical and traditional food, integrated production, certified organic farming, social farming, fair and solidarity-based trade and products with specific freshness characteristics purchased from short supply chains, which all are to reduce the environmental impact and support the local economy. The above-mentioned provisions of the Italian Public Procurement Code and the ministerial guidelines issued on their basis are certainly capable of contributing to the development of local food systems through the application of criteria for typical and traditional products from short supply chains. They do not, however, use the localism food clause concerning geographical proximity of the product.

The localism food clause is directly included in the ministerial decree on the distribution of funds for organic school canteens.<sup>10</sup> The decree sets out the award criteria that should be included in the tender documents for entities providing nutrition services to organic school canteens. The criteria

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<sup>9</sup> Linee di indirizzo nazionale per la ristorazione ospedaliera, assistenziale e scolastica, 17 novembre 2021, [https://www.salute.gov.it/imgs/C\\_17\\_pubblicazioni\\_3141\\_allegato.pdf](https://www.salute.gov.it/imgs/C_17_pubblicazioni_3141_allegato.pdf) [accessed on 21.04.2024].

<sup>10</sup> Decreto 18 dicembre 2017 n. 14771 (Gazzetta Ufficiale, Serie Generale No. 79 of 5.04.2018).

aim to encourage the consumption of sustainable organic products and reduce food waste. One of the criteria is to source organic products in geographical proximity to the place where the services are provided in order to reduce the environmental impact with a particular focus on reducing greenhouse gas emissions. A production area for organic products is considered close if it is within a maximum radius of 150 km on land.<sup>11</sup> According to the FAO, the Italian regulations “combined with a well-developed system to support high-quality food and nutritional standards in school meals provide a policy context that is very conducive to local and organic procurement.”<sup>12</sup>

In Italy, regional legislation plays an important role, due to the legislative competence of the regions which mostly support local products. For example, the Region of Umbria, in its Regional Law No. 1/2011, “in order to support short supply chains and zero-kilometer and quality products,” encourages the use of this type of products by managers of mass catering services.<sup>13</sup> In order to achieve this objective, the Act requires that in tenders for mass catering services, public authorities guarantee priority to entities that provide for the use of “local products, from short supply chains and quality products, in an amount of not less than 35% of the value in relation to the value of agricultural products generally used on an annual basis.”<sup>14</sup>

## 2. Public procurement regulations for local food in France

The French Public Procurement Code<sup>15</sup> in Article R. 2152-7<sup>16</sup> provides for the most economically advantageous tender clause and criteria such as environmental performance. Specifically, it allows the use, among others, of an award criterion of development of a direct supply chain of agricultural products. At the same time, in order not to infringe the principle of freedom of competition, the legislation does not prohibit the supply of products from

<sup>11</sup> See point 4 of the annex to the decree: Decreto 18 dicembre 2017 n. 14771.

<sup>12</sup> FAO, *Alliance of Bioversity...*, p. 288.

<sup>13</sup> Article 4(5) of the Law of the Region of Umbria (legge regionale 10 febbraio 2011, n. 1, “Bollettino Ufficiale” n. 8 of 16.02.2001).

<sup>14</sup> *Ibidem*.

<sup>15</sup> The Code (Code de la commande publique) was created by l’ordonnance n° 2018-1074 du 26 novembre 2018 (JORF n° 0281 of 5.12.2018) and décret n° 2018-1075 du 3 décembre 2018 (Journal officiel de la République française No. 0281 of 5.12.2018; JORF) and entered into force on 1 April 2019.

<sup>16</sup> Article R2152-7 was introduced into the Code of public procurement by the decree: Création Décret n° 2018-1075 du 3 décembre 2018 (JORF No. 0281 of 5.12.2018).

long chains, provided that the direct supply criterion is met.<sup>17</sup> However, “direct supply” is not a geographical criterion.<sup>18</sup> Also, the French Rural Code contains the precepts relating to public food procurement, which apply throughout the whole France.<sup>19</sup>

Regarding the localism food clause, the French legislator supports the development of the public acquisition of food products within the framework of the Territorial Food Projects (PAT, by its French acronym), according to Article 230-5-1 II of the Rural Code<sup>20</sup> by imposing an explicit obligation on public legal persons to source such products. PATs are defined in Article L.111-2-2 of the same Code, and their principal aim is to implement a territorial food system, normally at a departmental level.<sup>21</sup> There are currently more than 430 PATs recognised by the French Ministry of Agriculture. In general, their geographical extension coincides with the administrative borders already defined, whether provincial or regional.<sup>22</sup> Therefore, according to Article 230-5-1 II of the Rural Code, the legislator encourages public authorities to develop, indirectly, the acquisition of food from their own region or department.<sup>23</sup>

This legal encouragement is extremely surprising, especially taking into account several responses from the French Ministry of the Economy and Finance, which pleads against localism, or a geographical criterion, as it is not compatible with the principle of non-discrimination and the free movement of goods.<sup>24</sup> As a general rule, localism is banned in public procurement, and even the reduction of greenhouse gas emissions cannot justify the introduc-

<sup>17</sup> G. Rochdi, *Le développement des circuits alternatifs de distribution*, in: B. Grimonprez, D. Rochards (eds.), *Agriculture et ville, vers de nouvelles relations juridiques*, Poitiers 2016, p. 160.

<sup>18</sup> More on the concept of “short supply chains” and “local products,” see in A. Kapała, *Krótkie łańcuchy dostaw i lokalne systemy żywnościowe. Studium prawnoporównawcze*, Lublin 2023, pp. 52–70.

<sup>19</sup> From the article L. 230-5 to article L. 230-5-8 Rural Code.

<sup>20</sup> Code rural et de la pêche maritime, Article L230-5-1 of modified by LOI n°2021-1104 du 22 août 2021 – art. 257 (V) (JORF No. 0196 of 24.08.2021).

<sup>21</sup> Loi n° 2021-1104 du 22 août 2021 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets (JORF No. 0196 of 24.08.2021).

<sup>22</sup> Observatoire OnPAT: <https://rnpat.fr/projets-alimentaires-territoriaux-pat/patnorama-presentation/> [accessed on 10.05.2024].

<sup>23</sup> Les personnes morales de droit public développent l’acquisition de produits dans le cadre des PAT définies à l’article L.111-2-2 du Code Rural et de la Pêche Maritime.

<sup>24</sup> Ministre d’Économie et Finances, Réponse ministérielle n° 24584 JOAN 25 février 2020, p. 1485; Réponse ministérielle n° 33777, JOAN 7 septembre 2021, p. 6695.

tion of a tender selection criterion, according to the Ministry of Economy, because such would be discriminatory.<sup>25</sup>

Despite this general prohibition of localism, the public food procurement regime seems to benefit from a certain permissiveness, even legally established under Art. 230-5-1 II of the Rural Code. Thus, the exemption of the localism food clause to the prohibition of territorial roots in the public procurement regime is due to the PATs' strategic virtuosity, not only environmental but also social. Hence, according to the French legislator foodstuffs from PATs are considered a valid exemption from the application of free competition to the public procurement regime.<sup>26</sup>

### 3. Public procurement regulations for local food in Spain

In the Spanish legal system, the only regulation that applies throughout Spain is Article 22.3 of the climate change law,<sup>27</sup> which encourages public national authorities to include conditions for the performance of contracts prioritizing fresh or seasonal foods, and with a short distribution circuit.<sup>28</sup> This national regulation does not encourage the localism food clause as a geographical distance or rooting criterion. In this regard, the regional regulation focuses all our attention.

Within the framework of Spanish regions, there is a wide list of regulations affecting public food procurement.<sup>29</sup> The analysis of the large regional regulatory catalogue allows making some general conclusions. Regarding their scope of application, on the one hand, because they are regional acts, their territorial scope is limited to each respective region.<sup>30</sup> On the other hand, the regulations are aimed mainly at public school canteens. Another observation is that public food procurement in Spain has essentially developed as

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<sup>25</sup> Ministre d'Économie et Finances, Réponse ministérielle n° 31656, JOAN 5 octobre 2021, p. 7393.

<sup>26</sup> See conditions allowing quantitative restrictions between Member States in Article 36 TFEU; the list is not *numerus clausus*.

<sup>27</sup> Ley española 7/2021, de 20 de mayo, de cambio climático y transición energética (Spanish Official Journal No. 121 of 21.05.2021).

<sup>28</sup> This article could be criticised for the largely vague notions, as it does not define fresh, seasonal or short distribution circuit foods, nor does it refer to other regulation.

<sup>29</sup> X. Lazo Vitoria, *El tsunami del "producto local" llega a la contratación pública en España*, "Revista General de Derecho Administrativo" 2023, núm. 64.

<sup>30</sup> *Comunidades Autónomas*, in Spanish. There are seventeen.

a result of the very recent sectoral acts,<sup>31</sup> including climate change,<sup>32</sup> food waste and circular economy,<sup>33</sup> nutritional health,<sup>34</sup> and the territorial cohesion regulation<sup>35</sup> being the oldest regulation dating back to 2018. This clearly shows that current interest in public food procurement in Spain is growing. All of these sectoral regulations utilise public procurement as a strategic tool to achieve purposes other than merely a public food supply, whether it is fighting against depopulation in rural areas or promoting healthier and more sustainable diets.

The most important analysis refers to the intrinsic foodstuffs' characteristics promoted by the regional acts; seasonal, fresh, organic and local, which are the criteria more reiterated by the regulations regarding public food procurement. Regarding the core of interest of this paper, each regional act analysed, except one,<sup>36</sup> incorporate a food clause under different designations: food proximity, short food, local food supply chains, nearby food transportation. Nonetheless, none of the regional regulations except

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<sup>31</sup> There are also some legal precepts regarding local food in the regional acts on public procurement: Ley 11/2023 de Aragón de uso estratégico de la contratación pública (BOE, Spanish Official Journal No. 5 of 5.01.2024); Ley Foral 2/2018 de Navarra de contratos públicos (Spanish Official Journal No. 270 of 11.11.2021).

<sup>32</sup> Ley 8/2018 medidas frente al cambio climático y para la transición hacia un nuevo modelo energético en Andalucía (Spanish Official Journal No. 269 of 7.11.2018); Ley 10/2019, de 22 de febrero, de cambio climático y transición energética de las Islas Baleares (Spanish Official Journal No. 89 of 13.04.2019); Ley Foral 4/2022 de cambio climático y transición energética de Navarra (Spanish Official Journal No. 93 of 19.04.2022); Ley 6/2022 de cambio climático y transición energética de Canarias (Spanish Official Journal No. 30 of 4.02.2023).

<sup>33</sup> Ley foral de Navarra 14/2018 de residuos y su fiscalidad (Spanish Official Journal No. 157 of 29.06.2018); Ley 3/2023 de economía circular de Andalucía (Spanish Official Journal No. 98 of 25.04.2023); Ley 3/2020 de prevención de las pérdidas y el despilfarro alimentarios de Cataluña (Spanish Official Journal No. 78 of 21.03.2020); Ley 5/2022 de residuos y suelos contaminados para el fomento de la economía en la Comunidad Valenciana (Spanish Official Journal No. 34 of 9.02.2023).

<sup>34</sup> Decreto 39/2019 sobre la promoción de la dieta mediterránea en los centros educativos y sanitarios de las Islas Baleares. Decreto 84/2018 de fomento de una alimentación saludable y sostenible en los centros de la Generalitat Valenciana.

<sup>35</sup> Ley 2/2021 de medidas económicas, sociales y tributarias frente a la despoblación y para el desarrollo del medio rural en Castilla La Mancha (Spanish Official Journal No. 165 of 12.07.2021); Ley 5/2023 integral de medidas contra el despoblamiento y por la equidad territorial de la Comunidad Valenciana (Spanish Official Journal No. 105 of 3.05.2023); Ley 5/2021 de impulso demográfico de Galicia (Spanish Official Journal No. 78 of 1.04.2021); Ley 3/2022 de medidas ante el reto demográfico y territorial de Extremadura (Spanish Official Journal No. 86 of 11.04.2022).

<sup>36</sup> Ley 3/2020 de prevención de las pérdidas y el despilfarro alimentarios de Cataluña (Spanish Official Journal No. 78 of 21.03.2020).



Article 4.32 of the Canary Island climate change law defines these different local food criteria, and this article defines proximity in public procurement as a distance equal to the territorial scope of the islands.<sup>37</sup>

Despite this lack of local food definition in the public procurement regime, other Spanish regional legislations have taken care to define local food.<sup>38</sup> Most of this regulation defines local food as a regional food. This could be problematic in the event when the public authority adopted the definition of local food as a regional food, which would then be considered as a prohibited territorial root due to regional discrimination.

#### 4. Public procurement regulations for local food in Poland

In Poland, pursuant to Article 17(1) of the Public Procurement Law (PPL),<sup>39</sup> public procurement contracts should be awarded in accordance with the principle of economic efficiency with regard to procurement expenditure made by a public entity. This principle, as in Directive 2014/24/EU, is a general clause in public procurement that requires the best quality of goods and services to be achieved within the allocated funds.<sup>40</sup> The legislator did not limit itself only to the cost aspect, as it requires that “the best effects of the

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<sup>37</sup> As the Canary Island is located quite far from the European continent, this equivalence between local food and regional food is justified and proportionate. Ley 6/2022 de cambio climático y transición energética de Canarias (Spanish Official regional Journal No. 93 of 19.04.2022).

<sup>38</sup> Decreto andaluz 163/2016 (Spanish Official regional Journal No. 210 of 2.11.2016); Ley aragonesa 7/2017 (Spanish Official regional Journal No. 133 of 13.09.2017); Ley asturiana 2/2019 (Spanish Official regional Journal No. 47 of 8.03.2019); Ley balear 3/2019 (Spanish Official Journal No. 67 of 19.03.2019); Decreto catalán 24/2013 (Spanish Official regional Journal No. 6290 of 10.01.2013); Decreto valenciano 201/2017 (Spanish Official regional Journal No. 8238 of 20.02.2018); Decreto gallego 125/2014 (Spanish Official regional Journal No. 186 of 30.09.2014); Ley murciana 4/2019 (Spanish Official Journal No. 117 of 16.05.2019); Ley Foral 5/2023 (Spanish Official Journal No. 80 of 4.04.2023); Decreto vasco 76/2016 (Spanish Official regional Journal No. 97 of 24.05.2016); Ley canaria 6/2019 (Spanish Official Journal No. 110 of 8.05.2019); Decreto extremeño 17/2021 (Spanish Official regional Journal No. 58 of 26.03.2021); Decreto manchego 71/2020 (Spanish Official regional Journal No. 230/2020 of 13.11.2020).

<sup>39</sup> Act of 11 September 2019 on Public Procurement Law (Journal of Laws of 2022, item 1710, as amended), hereinafter cited as PPL.

<sup>40</sup> M. Szymanowska, *Konsekwencje doradztwa udzielanego zamawiającemu przez wykonawcę w przygotowaniu udzielenia zamówienia publicznego*, “Prawo Zamówień Publicznych” 2021, no. 3, p. 114.

contract, including social, environmental and economic effects” be obtained in relation to the expenditures incurred.<sup>41</sup> This means that economic efficiency is understood in the Act more broadly than just cost efficiency and also refers, following the EU directive, to elements of sustainable development.<sup>42</sup>

The implementation of the principle of economic efficiency should be manifested primarily in the appropriate preparation of the procedure, including a correct description of the subject matter of the contract (Article 99 of PPL), in which the contracting authority should specify the required features of the supplies. Those features may include a specific process, a production method, or the execution of required deliveries. Whereas, in the process of determining certain terms of the contract, what may be taken into account are selected economic, environmental, social, innovation and employment aspects.<sup>43</sup>

In addition, as noted in the literature, pursuant to the provisions of Articles 241–245 of the PPL, it is necessary to apply appropriate criteria for the evaluation of tenders, thus allowing for the selection “of the really best offer, and not only the cheapest one in the short term.”<sup>44</sup> As provided for in Article 242 (1) PPL, the most advantageous tender may be selected on the basis of qualitative criteria<sup>45</sup> and price or cost, or only on the basis of price or cost. Qualitative criteria may be, in particular, criteria relating to quality, including technical parameters, environmental and social aspects, delivery conditions, including the method of delivery.<sup>46</sup>

With regard to the method of determining the criteria for the evaluation of tenders for the purposes of the conducted procedure, unlike the Italian and French regulations, the Act repeats the provisions of Article 67 of Directive 2014/24/EU and do not add any other criteria concerning food. At the same time the Polish regulations do not exclude the use of the criteria relating to the origin of products from direct deliveries or seasonal products, which may be adopted by the contracting authority as quality criteria.

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<sup>41</sup> Article 17 (1) (2) of PPL.

<sup>42</sup> M. Szymanowska, *Konsekwencje doradztwa...*, p. 114.

<sup>43</sup> Articles 91–98 of PPL.

<sup>44</sup> M. Jaworska, D. Grześkowiak-Stojek, J. Jarnicka, A. Matusiak (eds.), *Prawo zamówień publicznych. Komentarz*, Warszawa 2021.

<sup>45</sup> The selection of the most advantageous tender solely on the basis of qualitative criteria is obligatory only if, on the basis of generally applicable regulations or decisions of competent authorities, the price or cost is fixed (Article 242 (3) of PPL).

<sup>46</sup> Article 242 (2) of PPL. Supplies are understood as the acquisition of goods, rights and other goods (energy, animals), in particular on the basis of sale, delivery, contracting of agricultural products, as well as rental, lease and leasing (Article 2 (2) of PPL).

When it comes to the selection of an offer on the basis of price or cost only, the Act introduces restrictions on the possibility of its application.<sup>47</sup> Public contracting authorities and their associations may not use the price as a sole criterion for evaluating tenders or as a criterion with a weight exceeding 60%. This is only possible if in the description of the subject matter of the contract the quality requirements relating to at least the main elements that make up the subject matter of the contract have been specified.<sup>48</sup> The legislator therefore made use of the possibility left in Directive 2014/24/EC (in Article 67 (2) (3)) to the Member States to exclude contracting authorities from using only price or cost as the sole award criterion.

It has been noted that in the past the use of the price evaluation criteria only resulted in an undesirable practice of offering low quality at a low price.<sup>49</sup> The introduction into the previous version of the Public Procurement Law of a requirement to apply non-price criteria as well<sup>50</sup> was intended to encourage contracting authorities to solve the problem.<sup>51</sup> Unfortunately, this obligation did not bring about the expected effects because the non-price criteria included in the contracts, usually with a weight of 1 to 5%, did not have a real impact on the submitted offers and the outcome of the tender proceedings.<sup>52</sup> In consequence and with a view of carrying out high-quality contracts, the legislator introduced a rule for the use of non-price criteria with a total weight of at least 40%.<sup>53</sup> It is pointed out, however, that, for the most part, the introduced criteria continue to have a limited differentiating impact on the results of the procedure (understood as a qualitatively effective procurement of the contract). The contracting parties are rather reluctant to apply qualitative criteria, focusing rather on the algorithmic, quantifiable ones.<sup>54</sup> The probable reason for the non-application of non-price criteria may

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<sup>47</sup> According to recital 90 of the preamble to Directive 2014/24/EU “In order to encourage a greater quality orientation of public procurement, Member States should be permitted to prohibit or restrict the use of price only or cost only to assess the most economically advantageous tender where they deem this appropriate.”

<sup>48</sup> Pursuant to Article 246(1) of PPL.

<sup>49</sup> *Pozacenowe kryteria oceny ofert. Poradnik z katalogiem dobrych praktyk*, Urząd Zamówień Publicznych, p. 4, [https://www.uzp.gov.pl/\\_data/assets/pdf\\_file/0030/39774/Pozacenowe-kryteria-oceny-ofert-cz.I.pdf](https://www.uzp.gov.pl/_data/assets/pdf_file/0030/39774/Pozacenowe-kryteria-oceny-ofert-cz.I.pdf) [accessed on 21.04.2024].

<sup>50</sup> Act of 29 January 2004 on Public Procurement Law (Journal of Laws of 2019, item 1843).

<sup>51</sup> *Pozacenowe kryteria oceny ofert...*, p. 4.

<sup>52</sup> *Ibidem*.

<sup>53</sup> *Ibidem*.

<sup>54</sup> *Ibidem*.

be the lack of good practices in this field and the fear of possible objections from the control authorities.<sup>55</sup>

Finally, also when it comes to school food regulations, unlike in Italy, France or Spain where the regulations impose an obligation to serve fresh food and use direct delivery, or even “local” products, Polish regulations do not provide for such obligations. The Regulation of the Minister of Health on groups of foodstuffs intended for sale to children and adolescents in educational institutions and the requirements to be met by foodstuffs used as part of the collective feeding of children and adolescents in these institutions,<sup>56</sup> lists various food groups from which foodstuffs used in meals should come (vegetables, fruits, whole grain products, etc.), regardless of their characteristics such as seasonality, organic, local, or from direct supplies.

## Conclusions

The conducted considerations allow to formulate a few conclusions. Both the Italian, French and Spanish national public procurement regulations provide for the obligation to apply criteria that relate to the origin of products from direct supplies or short supply chains. These national rules do not apply any explicit geographical criterion of the origin of products, with the exception of the Italian decree on organic school canteens. However, the localism food criteria has been incorporated into their legal systems, though differently in each Member State: in Italy and Spain – through regional regulations that explicitly contain such a clause, in France – through the institutionalisation of Territorial Food Projects. But in the very end, the result is the same: the localism food clause has been incorporated into the national regulations, justified by social and environmental requirements.

Spain, and above all its regional entities, have developed a voluminous catalogue of regulations which include certain precepts relating to the public food procurement. Consequently, while in France the most important regulation regarding public procurement of local food is included in one article of the French Rural Code, in Spain (and also Italy) we can count a significant number of regional regulations regarding local food. This is due to the different territorial organisation of each State. Therefore, in the Spanish and

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<sup>55</sup> Ibidem.

<sup>56</sup> Regulation of the Minister of Health on groups of foodstuffs intended for sale to children and adolescents in educational institutions and the requirements to be met by foodstuffs used as part of the collective feeding of children and adolescents in these institutions (Journal of Laws of 2016, item 1154).

Italian legal systems, because of regionalism, there are many more laws in this respect than in the French one.

It might be argued, not without reason, that the countries should forbid the localism food clause in the public procurement regime as it is contrary to the rules of the free competition in the single market. EU legal rules prevent public authorities from expressing an explicit preference for local procurement, in order to avoid protectionism.<sup>57</sup> Nevertheless, the localism food clause has found its legal motivation in public procurement as part of the strategic criteria, both social and environmental.

Compared to Italian, French and Spanish regulations, Polish public procurement regulations are not favourable to local food systems. Poland, like France, has a more centralised legal system, and the national public procurement law with regard to tender evaluation criteria basically repeats the provisions of Directive 2014/24/EU and does not add other possible criteria for food, including origin from direct supply or short supply chains. The guides prepared by the Public Procurement Office also do not mention this type of green and sustainable criteria for food (except for organic products), nor does this the regulation on the group of foodstuffs intended for sale to children and adolescents in educational institutions. Therefore, Polish public procurement policy and law do not pay attention to local food or food from short supply chains.

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<sup>57</sup> C. Hilson, *Going local? EU law, localism and climate change*, “European Law Review” 2008, no. 33 (2), pp. 194–210.

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